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SENATE BILL 745

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO HEALTH INSURANCE; PROVIDING FOR FINANCIAL
INCENTIVES FOR HEALTH INSURANCE THAT INCLUDE A QUALIFIED
WELLNESS OR DISEASE MANAGEMENT PROGRAM

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-18-13.1 NMSA 1978 (being Laws
1994, Chapter 75, Section 26, as amended) is amended to read:

"59A-18-13.1. ADJUSTED COMMUNITY RATING-- WELLNESS AND
DISEASE MANAGEMENT PROGRAMS. --

A. Every insurer, fraternal benefit society, health
maintenance organization or nonprofit health care plan that
provides primary health insurance or health care coverage
insuring or covering major medical expenses shall, in
determining the initial year's premium charged for an
individual, use only the rating factors of age, gender,

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1 geographic area of the place of employment and smoking
2 practices, except that for individual policies the rating
3 factor of the individual's place of residence may be used
4 instead of the geographic area of the individual's place of
5 employment.

6 B. In determining the initial and any subsequent
7 year's rate, the difference in rates in any one age group that
8 may be charged on the basis of a person's gender shall not
9 exceed another person's rates in the age group by more than
10 twenty percent of the lower rate, and no person's rate shall
11 exceed the rate of any other person with similar family
12 composition by more than two hundred fifty percent of the lower
13 rate, except that the rates for children under the age of
14 nineteen or children aged nineteen to twenty-five who are full-
15 time students may be lower than the bottom rates in the two
16 hundred fifty percent band. The rating factor restrictions
17 shall not prohibit an insurer, fraternal benefit society,
18 health maintenance organization or nonprofit health care plan
19 from offering rates that differ depending upon family
20 composition.

21 C. An insurer, fraternal benefit society, health
22 maintenance organization or nonprofit health care plan that
23 provides a qualified wellness or disease management program may
24 use a rating factor that reflects the expected level of
25 participation in the program and the anticipated effect the

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1 program will have on utilization or medical claim costs. A
2 qualified wellness or disease management program shall:

3 (1) meet the requirements of the federal
4 Health Insurance Portability and Accountability Act of 1996 for
5 bona fide wellness programs;

6 (2) provide financial incentives to covered
7 employees or individuals for participating in the program; and

8 (3) provide to covered employees or
9 individuals for whom it is unreasonably difficult to satisfy
10 the program's applicable standards, reasonable alternative
11 methods for achieving program participation.

12 D. The methodology proposed by the insurer,
13 fraternal benefit society, health maintenance organization or
14 nonprofit health care plan for establishing rating factors for
15 a qualified wellness or disease management program may take
16 into consideration:

17 (1) the anticipated average percentage of
18 employees or individuals eligible to participate in the
19 program;

20 (2) the anticipated efficacy of the financial
21 incentives in producing high levels of program participation;

22 (3) the level of program participation
23 achieved in prior coverage periods;

24 (4) the expected success rate for program
25 participants;

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- 1 (5) clinical studies; and
- 2 (6) the insurer's experience in the use of the
- 3 program.

4 [~~E.~~] E. The provisions of this section do not
5 preclude an insurer, fraternal benefit society, health
6 maintenance organization or nonprofit health care plan from
7 using health status or occupational or industry classification
8 in establishing:

- 9 (1) rates for individual policies; or
- 10 (2) the amount an employer may be charged for
- 11 coverage under the group health plan.

12 [~~D.~~] F. As used in Subsection [~~E.~~] E of this
13 section, "health status" does not include genetic information.

14 [~~E.~~] G. The superintendent shall adopt
15 [~~regulations~~] rules to implement the provisions of this
16 section.

17 Section 2. Section 59A-23B-6 NMSA 1978 (being Laws 1991,
18 Chapter 111, Section 6, as amended) is amended to read:

19 "59A-23B-6. FORMS AND RATES--APPROVAL OF THE
20 SUPERINTENDENT--ADJUSTED COMMUNITY RATING. --

21 A. All policy or plan forms, including
22 applications, enrollment forms, policies, plans, certificates,
23 evidences of coverage, riders, amendments, endorsements and
24 disclosure forms, shall be submitted to the superintendent for
25 approval prior to use.

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1 B. No policy or plan may be issued in the state
2 unless the rates have first been filed with and approved by the
3 superintendent. This subsection shall not apply to policies or
4 plans subject to the Small Group Rate and Renewability Act.

5 C. In determining the initial year's premium or
6 rate charged for coverage under a policy or plan, the only
7 rating factors that may be used are age, gender, geographic
8 area of the place of employment and smoking practices, except
9 that for individual policies the rating factor of the
10 individual's place of residence may be used instead of the
11 geographic area of the individual's place of employment. In
12 determining the initial and any subsequent year's rate, the
13 difference in rates in any one age group that may be charged on
14 the basis of a person's gender shall not exceed another
15 person's rate in the age group by more than twenty percent of
16 the lower rate, and no person's rate shall exceed the rate of
17 any other person with similar family composition by more than
18 two hundred fifty percent of the lower rate, except that the
19 rates for children under the age of nineteen or children aged
20 nineteen to twenty-five who are full-time students may be lower
21 than the bottom rates in the two hundred fifty percent band.
22 The rating factor restrictions shall not prohibit an insurer,
23 fraternal benefit society, health maintenance organization or
24 nonprofit healthcare plan from offering rates that differ
25 depending upon family composition.

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1 D. An insurer, fraternal benefit society, health
2 maintenance organization or nonprofit healthcare plan that
3 provides a qualified wellness or disease management program may
4 use a rating factor that reflects the expected level of
5 participation in the program and the anticipated effect the
6 program will have on utilization or medical claim costs. A
7 qualified wellness or disease management program shall:

8 (1) meet the requirements of the federal
9 Health Insurance Portability and Accountability Act of 1996 for
10 bona fide wellness programs;

11 (2) provide financial incentives to covered
12 employees or individuals for participating in the program; and

13 (3) provide to covered employees or
14 individuals for whom it is unreasonably difficult to satisfy
15 the program's applicable standards, reasonable alternative
16 methods for achieving program participation.

17 E. The methodology proposed by the insurer,
18 fraternal benefit society, health maintenance organization or
19 nonprofit healthcare plan for establishing rating factors for a
20 qualified wellness or disease management program may take into
21 consideration:

22 (1) the anticipated average percentage of
23 employees or individuals eligible to participate in the
24 program.

25 (2) the anticipated efficacy of the financial

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1 incentives in producing high levels of program participation;

2 (3) the level of program participation
3 achieved in prior coverage periods;

4 (4) the expected success rate for program
5 participants;

6 (5) clinical studies; and

7 (6) the insurer's experience in the use of the
8 program.

9 ~~[D.]~~ F. The provisions of this section do not
10 preclude an insurer, fraternal benefit society, health
11 maintenance organization or nonprofit healthcare plan from
12 using health status or occupational or industry classification
13 in establishing:

14 (1) rates for individual policies; or
15 (2) the amount an employer may be charged for
16 coverage under a group health plan.

17 ~~[E.]~~ G. As used in Subsection ~~[D]~~ F of this
18 section, "health status" does not include genetic information.

19 ~~[F.]~~ H. The superintendent shall adopt regulations
20 to implement the provisions of this section."

21 Section 3. Section 59A-23C-5.1 NMSA 1978 (being Laws
22 1994, Chapter 75, Section 33, as amended) is amended to read:

23 "59A-23C-5.1. ADJUSTED COMMUNITY RATING. --

24 A. A health benefit plan that is offered by a
25 carrier to a small employer shall be offered without regard to

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1 the health status of any individual in the group, except as
2 provided in the Small Group Rate and Renewability Act. The
3 only rating factors that may be used to determine the initial
4 year's premium charged a group, subject to the maximum rate
5 variation provided in this section for all rating factors, are
6 the group members' :

- 7 (1) ages;
8 (2) genders;
9 (3) geographic areas of the place of
10 employment; or
11 (4) smoking practices.

12 B. In determining the initial and any subsequent
13 year's rate, the difference in rates in any one age group that
14 may be charged on the basis of a person's gender shall not
15 exceed another person's rate in the age group by more than
16 twenty percent of the lower rate, and no person's rate shall
17 exceed the rate of any other person with similar family
18 composition by more than two hundred fifty percent of the lower
19 rate, except that the rates for children under the age of
20 nineteen or children aged nineteen to twenty-five who are full-
21 time students may be lower than the bottom rates in the two
22 hundred fifty percent band. The rating factor restrictions
23 shall not prohibit a carrier from offering rates that differ
24 depending upon family composition.

25 C. A carrier that provides a qualified wellness or

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1 disease management program may use a rating factor that
2 reflects the expected level of participation in the program and
3 the anticipated effect the program will have on utilization or
4 medical claim costs. A qualified wellness or disease
5 management program shall:

6 (1) meet the requirements of the federal
7 Health Insurance Portability and Accountability Act of 1996 for
8 bona fide wellness programs;

9 (2) provide financial incentives to covered
10 employees or individuals for participating in the program; and

11 (3) provide to covered employees or
12 individuals for whom it is unreasonably difficult to satisfy
13 the program's applicable standards, reasonable alternative
14 methods for achieving program participation.

15 D. The methodology proposed by the carrier for
16 establishing rating factors for a qualified wellness or disease
17 management program may take into consideration:

18 (1) the anticipated average percentage of
19 employees or individuals eligible to participate in the
20 program;

21 (2) the anticipated efficacy of the financial
22 incentives in producing high levels of program participation;

23 (3) the level of program participation
24 achieved in prior coverage periods;

25 (4) the expected success rate for program

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participants;
(5) clinical studies; and
(6) the insurer's experience in the use of the
program.

~~[C.]~~ E. The provisions of this section do not preclude a carrier from using health status or occupational or industry classification in establishing the amount an employer may be charged for coverage under a group health plan.

~~[D.]~~ F. As used in Subsection ~~[C]~~ E of this section, "health status" does not include genetic information.

~~[E.]~~ G. The superintendent shall adopt regulations to implement the provisions of this section. "